

Bulletin 118

FILING OF PROOF OF FINANCIAL RESPONSIBILITY WITH AND PAYMENT OF SURCHARGE TO THE INDIANA PATIENT'S COMPENSATION FUND

July 29, 2003

This bulletin is addressed to all insurers, risk managers and surplus lines agents that collect and remit surcharge payments under Indiana's Medical Malpractice Act (Act) to the Patient's Compensation Fund (PCF). The Commissioner of the Indiana Department of Insurance is charged with administering the provisions of the Act. It has come to the Commissioner's attention that there is some confusion concerning penalties applicable to delinquent surcharge payments. This Bulletin is intended to clarify existing standards that are already in effect.

Pursuant to IC 34-18-5-3, the insurer, risk manager or surplus lines agent (hereinafter collectively referred to as "insurer") shall collect the surcharge due to the PCF. The surcharge is due to the PCF within thirty (30) days after the premium for the insurance coverage has been received by the insurer. In reviewing this issue the Department will presume that premium was received by the insurer no later than the effective date of the policy. If the surcharge is remitted to the PCF more than thirty (30) days after receipt by the insurer, the insurer is liable for a penalty equal to ten percent (10%) of the amount of surcharge.

A health care provider's status as a qualified health care provider may begin on the first date of coverage under the insurance policy if the PCF receives proof of financial responsibility and the surcharge not later than ninety (90) days after the effective date of the policy. If these items are received by the PCF more than ninety (90) days but not later than one hundred eighty (180) days after the policy effective date, the health care provider's qualification may begin on the effective date of the policy only if the insurer demonstrates to the satisfaction of the Commissioner that the surcharge was timely paid to the insurer and the insurer erred in not forwarding the surcharge to the PCF within ninety (90) days of the policy's effective date. See IC 34-18-3-5. In such instances the insurer must submit a request in writing to the Commissioner for an affirmative exercise of this discretion. Such request should be accompanied by documentation indicating the date the insurer received the surcharge payment from the health care provider.

If the Commissioner is satisfied that the conditions have been met for qualification to begin on the effective date of the policy, a progressive penalty for late payment is assessed. For a surcharge that is remitted ninety-one (91) to one hundred twenty (120) days after the policy's effective date a penalty in the amount of ten percent (10%) of the surcharge is owed to the PCF; a twenty percent (20%) penalty is due to the PCF if the surcharge is remitted after one hundred twenty (120) days but before one hundred fifty (150) days; and a penalty of fifty percent (50%) is due to the PCF for surcharge remitted from one hundred fifty (150) days to one hundred eighty (180) days after the policy effective date. If surcharge is received later than one hundred eighty (180) days after the policy effective date, the health care provider begins his/her status as qualified under the Act on the date the surcharge is received by the PCF.

The penalties discussed above are independent of one another. There may be instances where an insurer owes one or both of these penalties. Neither penalty may be used to offset, abate or mitigate the other penalty. The penalties are assessed against the insurer and may not be passed on to the health care provider.

The following are two illustrations:

(1) An insurer receives the surcharge from a health care provider and does not remit the surcharge to the PCF for forty-five (45) days. The insurer shall remit to the PCF the surcharge as well as a penalty of ten percent (10%) of the surcharge amount. The health care provider is qualified under the Act beginning the first day of the insurance policy.

(2) An insurer receives surcharge from a health care provider and does not remit the premium for one hundred (100) days. The insurer has jeopardized the health care provider's ability to coordinate its status as a qualified health care provider with its primary insurance coverage. If the insurer can show that the health care provider paid surcharge to the insurer in a timely fashion and that it was the insurer that failed to remit the surcharge to the PCF, the Commissioner has the discretion to find the surcharge to be timely and may begin the health care provider's status as a qualified health care provider on the effective date of the insurance policy rather than the date the surcharge was received. However, the insurer must remit the surcharge as well as a penalty in the amount of ten percent (10%) of the surcharge amount under IC 34-18-3-5(c). In addition, the insurer owes an additional penalty of ten percent (10%) of the surcharge amount under IC 34-18-5-3(b) for failing to forward the surcharge to the PCF within thirty (30) days of receipt.

The Commissioner is hereby directing all insurers that collect and remit surcharge payments to the PCF to review coverage for health care providers with effective dates of July 1, 2002, through the present. If any insurer failed to pay the appropriate penalties for untimely payment of surcharge the insurer shall file by October 1, 2003 a report detailing the instances where a penalty should have been remitted and was not. The report shall include the provider's name, the amount of the provider's surcharge, the policy number and the penalty amount and shall be accompanied by payment of the amounts in arrears. Any insurer that complies with this reporting and payment requirement by October 1, 2003, will not be subject to enforcement action by the Department of Insurance. An insurer that does not make payment by October 1, 2003, and is found to have failed to remit the penalties required by IC 34-18-3-5(b) or IC 34-18-5-3(c) may be subject to enforcement action.

INDIANA DEPARTMENT OF INSURANCE
Sally McCarty, Commissioner